THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.491 of 2006

Date: 9th November, 2006

Between :-

Smt. Mahaboob Mastana Begum @
Mumtaz Begum .. Petitioner

And

Government of A.P., rep. by its Secretary,
Revenue Department, Secretariat Building,
Hyderabad and 13 others ..
Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.491 of 2006

ORDER:-

1. The matter is appearing under the caption of *interlocutory* however at the request of the Counsel on record, the Writ Petition is being disposed of finally.

2. The writ petitioner filed the present Writ Petition praying for a Writ of Mandamus declaring that the proceedings in Rc. No.02-8275/96, dated 27-9-2005 issued by the 3rd respondent as illegal and unenforceable and set aside the same and pass such other suitable orders.

3. Several factual details are narrated in the affidavit filed in support of the Writ Petition.

4. Counter affidavits are filed on behalf of 3rd and 7th respondents.

5. Smt.Sesha Rajyam, the learned Counsel representing the writ petitioner had taken this Court through the averments made in the affidavit filed in support of the Writ Petition and would submit that the order impugned in the Writ Petition is clearly in contravention of the directions issued in W.A.No.1068/2005 dated 21-06-2005. The learned Counsel also further explained certain other factual details

in relation thereto.

6. Sri M.Prabhakar Rao, the Counsel representing the 3rd respondent however would maintain that the impugned order was made in accordance with law and the learned Counsel explained several facts which had been narrated in the counter affidavit filed in this regard.

7. Sri V.L.N.G.K.Murthy, the learned Counsel representing respondents 7, 12 and 13 would maintain that the writ petitioner is questioning the present impugned order but however even the order which had been obtained by the writ petitioner even prior thereto i.e., the original order is an illegal order. When that being so, when the effect of allowing the Writ Petition would be the revival of the said illegal order, such Writ not to be issued normally by the Writ Court. The learned Counsel also would submit that even if the well settled principles of Muslim Law to be followed, the stand taken by the writ petitioner cannot be sustained.

8. Sri Chaitanya, the learned Counsel representing R.10 and R.11 however made certain submissions taking a stand that the impugned order may have to be set aside and opportunity to be given to all the parties to make their respective submissions in this regard.

9. Heard the Counsel.

10. The writ petitioner had averred in the affidavit filed in support of the Writ Petition that her parents belong to Mulaparru village, West Godavari District and her mother Smt.Azizunnisa Beguma was granted licence of about 230 Coconut trees and 3 Tamarind trees situated on the road margin of Mulaparru to Chanta and Mulaparru to Deva Zilla Parishad road (presently under the control of Roads & Buildings Department) on 4-9-1957. It is further averred that as long as the mother of the petitioner was alive, she was in possession of the same and the petitioner was managing the trees as G.P.A. of her mother since 1991. It is further stated that she has been paying the rent for the trees on behalf of her mother till 1999 and her mother died in the year 1999. While her mother was alive, she executed a *will* dated 9-8-95 in her favour bequeathing her leasehold rights under a registered document dated 9-8-1995 and after the death of her mother, the petitioner has been in possession and managing the trees and both of her mother and the petitioner had incurred lot of expenditure by way of paying rent, maintaining them, putting fence etc., though the income from the trees is not encouraging due to vagaries of weather. It is further stated that after the death of the mother, the petitioner applied to Revenue authorities for

change of lease/licence locally called as 'Tree Patta' in her name. In pursuance of the said application, the 3rd respondent had communicated the proceedings No.12/82-85/96, dated 9-4-2002 transferring 'Tree Patta' in her name and called upon her to deposit Court fee stamp and accordingly she deposited the same. Thus she has been in possession of the Trees and managing them since the death of her mother in her own rights. It is further stated that the petitioner has 7 brothers and 4 of them have filed Writ Petition No.3199/2003 on the file of this Court questioning transfer of 'Tree Patta' in her name and subsequently had withdrawn the same on 29-9-2004. It is also stated that to the utter surprise and annoyance, the 3rd respondent issued proceedings in Rc.No.02-8275/96 Z.P., dated 21-1-2005 whereunder the 'Tree Patta' (Transfer of lease) granted in her favour has been cancelled and she was asked to handover the Trees by 31-3-2005. It is further stated that the proceedings dated 21-1-2005 of 3rd respondent as illegal, improper, arbitrary, besides being opposed to principles of natural justice as no notice was given to her before opassing the order dated 21-1-2005. It is further stated that the change of 'Tree Patta' in her name was effected after the matter was placed before the General Body of

Zilla Parishad and it was approved by the General Body and the Standing Committee. But while canceling the Patta, the 3rd respondent passed an order on his own for which he has no jurisdiction without placing the same before the General Body and Standing Committee. It is further mentioned that in the order that there are cases pending but no Court directed to change the Patta. The observation that the cancellation is being made as the parties are causing 'chikaku' to the management itself shows that the order is passed in haste and without application of mind. It is further stated that the order is passed without jurisdiction and against the principles of natural justice without conducting full pledged enquiry. Further it was stated that some of her brothers have objected even before transfer of patta in her favour and the transfer was made in her favour after considering all the facts and circumstances. It was further stated that when some her brothers tried to interfere with her possession and enjoyment, she filed O.S.No.668/2002 on the file of I-Additional Junior Civil Judge for injunction and pending suit, a temporary injunction was granted in I.A.No.3759/2002 in O.S.No.688/2002. It is also further stated that all her sisters and brothers are not made application as alleged but some of them signed the

application for transfer of 'Tree Patta'. It is further stated that the order of the 3rd respondent dated 21-1-2005 amounts to review of order dated 9-4-2002 for which he has no power, the writ petitioner filed W.P.No.1313/2005 and this Court while dismissing the Writ Petition, directed the 3rd respondent to issue Notice and decide the transfer of lease ('Tree Patta') and also directed to conduct an enquiry and as the Writ Petition was dismissed, the petitioner filed W.A.No.1068/2005 on the file of this Court and the Writ Appeal was disposed of by directing the 3rd respondent to conduct a detailed enquiry into the matter and this Court while setting aside the orders dated 9-4-2002 and 21-1-2005 directed the Chief Executive Officer, Zilla Parishad, West Godavari at Eluru to conduct an enquiry and pass appropriate orders and that he should not take any observations made by this Court while disposing of the Writ Petition or any observations made by the Division Bench while disposing of the Appeal as an expression of opinion on merits of the respective claims of the parties and that he shall independently conduct enquiry and pass appropriate orders in accordance with law after hearing the parties within a period of three months from the date of receipt of a copy of the order. It was also specified that the parties can raise all questions

of fact or law before the said authority and that *status quo* shall be maintained till the matter is decided by the said authority. Specific stand is taken that though the Division Bench while disposing of the Writ Appeal referred to supra directed the 3rd respondent to conduct an enquiry independently, no enquiry worth the name is conducted and no notices were served and no opportunity was given to the petitioner and the 3rd respondent had not received any explanation/representation or other material while making the order. It is also stated that against the said order, revision was filed by the 5th respondent praying for calling of records from the Office of the 3rd respondent and examine the same to pass appropriate orders and along with the said revision, the petitioner also filed an application for stay of impugned order of the 3rd respondent dated 27-9-2005. It is stated that the 5th respondent had not passed any order either on Revision or Stay petition.

11. In the counter affidavit filed by 3rd respondent, it was stated that as per the orders of this Court passed in W.A.No.1068/2005, DATED 21-6-2005 the Chief Executive Officer, Zilla Parishad, Eluru, had issued orders distributing the total coconut trees and tamarind trees

among ten family members/legal heirs of late Smt.Azizunnisa Begum, who is the lease holder of the above trees situated on the either side of the Zilla Parishad road margins on Mulaparru to Achanta and Mulaparru to Deva Road since date 4-9-57 after conducting the enquiry. It is also stated that Smt.Azizunnisa Begum resident of Mulaparru village fo West Godavari District has been granted lease for 230 coconut trees and 3 tamarind trees situated on the either side of Zilla Parishad road margins from Mulaparru to Achanta and Mulaparru to Deva road since 4-9-1957 by the erstwhile District Board of West Godavari, Eluru and the said leaseholder had been maintained the trees and paid the rents fixed by the Zilla Parishad from time to till she died in the year 1999. It is also further stated that the petitioner had submitted a representation to the authorities of the Zilla Parishad stating that she is the lovely daughter of her mother Smt.Azizunnisa Begum and her mother has executed a *will* in favour of her to enjoy the benefits over the 230 coconut trees and 3 tamarind trees which are under least agreement after her death. It is also stated that as per the contents of the representation and *will* submitted by the petitioner the Chief Executive Officer, Zilla Parishad, West Godavari, Eluru has issued orders in Roc.No.02/8285/96, dated 9-4-2002 transferring the lease

rights in favour of the petitioner. It is also further stated that the lease of the coconut trees and tamarind trees have been transferred to the name of the petitioner who is the daughter of the deceased leaseholder by the Zilla Parishad through the proceedings Roc.No.02/8285/96, dt.9-4-2002 based on the *will.* It is also stated that the deceased leaseholder has got ten children including the petitioner and the remaining brothers and sisters of the petitioner filed W.P.No.3199/2003 in this Court and challenged the above orders of the Chief Executive Officer, Zilla Parishad, Eluru and this Court dismissed the same as the petitioners withdrawn the Writ Petition. It is also stated that thereafter the family members other than the petitioner have submitted representation to the 3rd respondent seeking the equl shares of the trees basing on which the 3rd respondent distributed all the coconut trees and tamarind trees among the family members through the Pro.No.02/8285/96, dated 21-1-2005 and cancelled the earlier transfer orders issued in favour of the petitioner. It is further stated that the *will* submitted earlier is found fabricated/bogus *will* because the leaseholder Smt.Azizunnisa Begum did not consult the Zilla Parishad management before writing the *will* in favour of her daughter on the lease property which is against to the

terms and conditions of the lease agreement. It is also stated that as per the lease agreement, the property of the lease should not be transferred to others in case of the death of the leaseholder and the lease will be renewed to the legal heirs on their application and also the Zilla Parishad will be at liberty to revise the lease as deem fit. It is also stated that after the death of the leaseholder, the family members should have to meet the Zilla Parishad Management for a fresh lease agreement and instead of this, the petitioner has submitted bogus *will* against her brothers and sisters, and that the brothers and sisters of the petitioner approached this Court and hence, the orders of the Chief Executive Officer, Eluru, dated 21-1-2005 are not illegal, impror and arbitrary at all. It is further stated that the family members of the deceased leaseholder including the petitioner are quarrelling themselves to obtain the lease property of the Zilla Parishad. It is also stated that the petitioner had played fraud against the Zilla Parishad Management by producing fake *will* and approached this Court to obtained lease property illegally. It is also further stated that as per the orders of this Court, the Chief Executive Officer has conducted enquiry and issued orders in Rc.No.02/8285/96, dated 27-9-2005 and distributed all the trees equally among the ten family members of the

deceased leaseholder. It is also further stated that the Chief Executive Officer, Zilla Parishad, Eluru had issued registered notice dated 6-8-2005 to all the family members of the deceased leaseholder to attend the enquiry conducted in accordance with the orders of this Court passed in W.P.No.1068/2005 and the enquiry was conductd on 24-8-2005. It is also stated that all the members who attended the enquiry have submitted in writing that the lease property should be share equally and accordingly, the Chief Executive Officer, Zilla Parishad has passed orders dated 27-9-2005 with the approval of the Chairman, Zilla Parishad, Eluru and the action by the Chief Executive Officer has been ratified by the Zilla Parishad has been ratified by the Zilla Parishad Standing Committee. It is further stated that the attribution of the petitioner that the enquiry was not conducted and notices were not issued is utterly false. It is also further stated that as per the terms and conditions of the lease whenever any dispute arises in the lease agreement the decision/approval of the President, District Board (now Chairman, Zilla Parishad) is final. Accordingly, every order passed by the Chief Executive Officer, Zilla Parishad in this regard has been taken prior approval of the Chairman, Zilla Parishad. The Standing Committee of

the Zilla Parishad in its resolution No.500, dt.4-2-2006 approved the grant of lease. It is also a fact that the petitioner had submitted an appeal to the Commissioner PR & RE, A.P., Hyderabad besides to the W.P.No.491/2006.

12. The 7th respondent filed counter affidavit averring that it is a fact that Smt.Azizunnisa Begum was granted 230 coconut trees and 3 tamarind trees on 4-9-57 and she was in possession and enjoyment of the same. It is stated that it is not true to say that the petitioner was managing the trees as the General Power of Attorney of her mother since 1991. It is also stated that this respondent denies the allegation that the mother of the petitioner executed a registered *will* dated 9-8-95 in favour of the petitioner bequeathing her leasehold rights to the petitioner. It is also further stated that even assuming that the will pleaded is true, the said will is invalid to the extent of creating any rights in favour of the petitioner. It is also further stated that transferring the Patta in favour of the petitioner alone, to the exclusion of all other heirs of Smt.Azizunnisa Begum is illegal for the following reasons:-

i) The Will that is sought to be relied upon by the petitioner is contrary to Muslim Law and is void, even if it is true.

ii) The order dated 9-4-2002 was issued without notice to the other heirs of Smt.Azizunnisa

Begum. On coming to know of the issuance of the patta in favour of the petitioner, we made an application dated 5-12-2002.

iii) In fact, after the death of Smt.Azizunnisa Begum in 1999, we submitted a representation to the Chairman, Zilla Parishad. We submitted another representation defendant 14-3-2001 to the District Collector, West Godavari, Eluru. We also received notice from the Secretary, Mulaparru Panchayat on 29-2-2002 stating that tree taxes had to be paid for a total amount of Rs.11,545/-. In response to the said demand, we took a Demand Draft for Rs.11,545/- and sent the same to the Chief Executive Officer, Zilla Parishad, West Godavari through letter dated 11-5-2002. To our surprise, the same was returned with the information that the patta had been transferred in favour of the petitioner herein, by way of communication dated 28-5-2002. The Chief Executive Officer, under the said letter dated 28-5-2002, interestingly called upon us to submit our objections. Thus, it is clear that notwithstanding the knowledge of the official respondents with regard to the claim of the other heirs of the deceased Smt.Azizunnisa Begum, they failed to give us notice before transferring the patta in favour of the petitioner herein.

It is further stated that that having failed to obtain redress in spite of the letter dated 9-12-2002, the 7th respondent

and others were constrained to file W.P.No.3199/2003 duly impleading the petitioner herein as the 4th respondent therein and the 4th respondent therein filed her counter affidavit and contested the Writ Petition and however withdrew the Writ Petition as the pendency of the Writ Petition was being pleaded as an obstancle for disposal of their representation. It is also stated that subsequently, the order dated 21-1-2005 came to be passed duly cancellin the transfer of the patta in favour of the petitioner and also directing transferring the patta in favour of all of them. It is further stated that there is a settlement deed dated 13-11-94 which was signed by the petitioner also and the impugned order was passed taking the said settlement deed into consideration. Several other factual details had been narrated and specific stand was taken that the same is not in accordance with the principles of Mohammedan Law.

13. Reliance was placed on ***M.C.MEHTA v. UNION OF INDIA***[1] wherein the Apex Court while dealing with the discretion to be exercised under Articles 32 and 226 of the Constitution of India held that it is not always necessary for the Court to strike down an order merely because such order has been passed in breach of natural justice and Court can refuse to exercise its discretion of

striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party in violation of the principles of natural justice or which is otherwise not in accordance with law. In fact, the Apex Court relied on ***Mohd.Swalleh v. III ADJ (1988) 1 SCC 40)*** and had followed ***Gadde Venkateswara Rao v. Govt. of A.P. (AIR 1966 S.C., 828)***. Further reliance was placed on ***ALIGARH MUSLIM UNIVERSITY v. MANSOOR ALI KHAN***[2] wherein the Apex Court observed at paras 20, 22 and 24 as hereunder:-

> "As *pointed recently in M. C. Mehta v. Union of India, (1999) 6 SCC 237 : 1999 AIR SCW 2754 : (AIR 1999 SC 2583), there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in Gadde Venkateswara Rao v. Government of Andhra Pradesh, (1965) 2 SCR 172 : (AIR 1966 SC 828), it is not necessary to quash the order merely because of violation of principles of natural justice.*
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> *Chinnappa Reddy, J, in S.I.Kapoor's case (AIR 1981 SC 136), laid two exceptions (at p.395*

of SCC):(at pp.147 and 148 of AIR) namely, "if upon admitted or indisputable facts only one conclusion was possible", then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion as possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.

The 'useless formality' theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above – there has been considerable debate of the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C.Mehta, 1999 AIR SCW 2754 : (AIR 1999 S.C. 2583), referred to above. This Court surveyed the views expressed in various Judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Singham, Megarry, J., and Straughton, L.J. etc. in various cases and also views expressed by leading writers like Profs, Garner, Craig, De Smith, Wade, Defendant.H.Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the Court will be prejudging the issue. Some others have said, that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via-media rules. We do not think it necessary, in

this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case."

14. As can be seen from the nature of the dispute and the respective stands taken by the parties, this appears to be a dispute of the family members. Certain submissions were made in relation to the invalidity or otherwise of the *will* in question and also the principles of Mohammedan Law in relation thereto. This Court is not inclined to express any opinion relating to those aspects. It is no doubt true that while exercising the discretion by this Court under Article 226 of the Constitution of India if the effect of setting aside the order results in the revival of yet another illegal order, the Court may have to be slow in making such an order. However, on a careful reading of the impugned order, especially, in the light of the order in W.A.No.1068/2005 dated 21-6-2005 it may have to be taken that the said order had not been complied with while making the present impugned order. It is needless to say that that the impugned order as such may have to be read and the further averments if any made in the counter affidavit so as to supplement certain additional facts in relation to the impugned order need no serious consideration. The relevant portion of the order in W.A.No.1068/2005 is as hereunder:-

"We have heard learned Counsel for parties and we do not find any ground to interfere with the order of the learned Single Judge. But, it is pointed out that in paragraph 7 of the order of the learned Single Judge, the learned Single Judge has observed "Therefore, I do not find any grounds to set aside the order impugned and so the petition is dismissed." Therefore, Respondent No.3 may be guided by such observation and the enquiry to be held by Respondent No.3 would be an exercise in futility, as the learned Single Judge held that the impugned orders cannot be interfered with and cannot be set aside.

We feel that this observation would create difficulties for the 3rd respondent to decide the matter and in these circumstances, we set aside the orders dated 9-4-2002 and 21-1-2005 and direct the 3rd respondent to conduct an enquiry and pass appropriate orders. He should not take any observations made by the learned Single Judge while disposing of the Writ Petition or any observations made by us while disposing of this appeal as an expression of opinion on merits of the respective claims of the parties. He shall independently conduct enquiry and pass appropriate orders in accordance with law after hearing parties within a period of three months from the date of the receipt of a copy of this order. Parties can raise all questions of fact or law before the said authority. Till the matter is decided by the said authority, status quo shall be

maintained.

The Writ Appeal is accordingly disposed of. No costs."

When the Writ Appeal was disposed of with certain directions, the 3rd respondent is bound to comply with the said order. On a careful reading of the order, this Court is satisfied that the impugned order made by the 3rd respondent is not in accordance with the directions and observations made by this Court in W.A.No.1068/2005. In view of the same, the other contentions which had been advanced before this Court that allowing the present Writ Petition would amount to revival of yet another illegal order needs no serious consideration inasmuch as this Court is satisfied that the Writ Appeal order had not been complied with while making the impugned order. In view of the same, the impugned order is hereby set aside and the matter is remitted to the 3rd respondent to reconsider the same, in the light of what had been specifically stated in the order in W.A.No.1068/2005 specified supra. It is needless to say that the 3rd respondent to decide the matter at an early date and till then status quo as on today to be maintained.

15. Accordingly, the Writ Petition is allowed to the extent indicated above. No order as to costs.

Justice P.S.Narayana

9th November, 2006

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[1] (1999) 6 SCC., 237

[2] AIR 2000 S.C., 2783